NO. 3900

In the United States Circuit Court of Appeals

For the Ninth Circuit

ELI ROUSSEAU,

Appellant,

vs.

LUTHER WEEDIN, as Commissioner of Immigration for the District of Washington,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

HON. JEREMIAH NETERER, *Judge.*

BRIEF OF APPELLEE

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STATEMENT OF CASE

The appellant while held by the Commissioner of Immigration on a warrant of deportation applied to the District Court for a writ of habeas corpus. A return was filed and a hearing had, after which an order denying the writ was entered. This order is appealed from.

Appellant was convicted in the Superior Court of Snohomish County, Washington, of the crime of being a "jointist" and was sentenced to the State Penitentiary to serve an indeterminate sentence at hard labor of from one to five years. An appeal was perfected to the Supreme Court of the State and during its pendency appellant was at large on bond. During this time he left the jurisdiction and made a visit in the eastern portion of the United States and Canada, and hearing of the affirmance of his conviction returned to the state of Washington from and through Canada, entering at the port of Blaine, Washington, and claiming to the officers that he was a citizen of the United States. A warrant was issued charging that appellant Rousseau landed at the port of Blaine, Washington, on the 12th of October, 1920, and that he had been found in the United States in violation of the Immigration Act of February 5, 1917, for the reason:

> "That he was a person likely to become a public charge at the time of his entry; and that he entered without inspection."

A hearing was had upon these charges at which the appellant was not represented. However, he was advised of his right to counsel, which he declined. Additional charges were preferred and in

each instance appellant was asked if he desired an attorney but always answered in the negative. After this hearing a warrant of deportation was issued which warrant contained the following recitations:

> "That he has been convicted of, and admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he has been found connected with the management of a house of prostitution, of other places habitually frequented by prostitutes, or where prostitutes gather; that he has been found receiving, sharing (13) in, or deriving benefit from the earnings of a prostitute; and that he was a person likely to become a public charge at the time of his entry."

ARGUMENT

At the outset this Court's attention is invited to the opening sentence of Judge Neterer's decision wherein he states:

> "All of the grounds set forth in the warrant of deportation, except the first, may be disregarded." (Tr. p. 15).

The portion of the warrant upon which Judge Neterer rests his decision is as follows:

> "That he has been convicted of and admits having committed a felony or other crime or

> misdemeanor involving moral turpitude prior to his entry into the United States * * *;"

The trial judge, having thus cogently narrowed the proposition upon which his decision rested, it seems patent that the first four of appellant's assignments of error listed in his brief are beside the issue as they have to do with matters and things which the court disregarded.

That Judge Neterer did not consider any of the grounds other than the one above mentioned is very clearly pointed out and indicated in the concluding paragraph of his opinion (Tr. p. 17), wherein he with some apparent asperity took exception to the Immigration Service's method of conducting hearings.

Answering appellant's fifth assignment of error, it may be observed that counsel in the second paragraph of their argument at page ten of their brief use the following language: "Appellant * * *, was asked if he wanted an attorney."

Discussing appellant's sixth assignment of error, it may be observed that in his petition for a writ of habeas corpus (Tr. p. 4) appellant states the fact to be that he was convicted in the Superior Court of the State of Washington for Snohomish

County of the crime of being a Jointist, and it is not denied at any point in the record that this conviction took place prior to his last entry into the United States from the Dominion of Canada.

It is conceded by the appellant that he never has been a citizen of the United States.

Having these facts in mind the only issue which this Court has to decide is whether or not Judge Neterer correctly determined that a conviction in the State of Washington of the crime of being a "Jointist" is a conviction of a felony involving moral turpitude.

A "Jointist" is defined as follows:

> "Any person who opens up and conducts or maintains either as principal or agent any place for the unlawful sale of intoxicating liquors be, and hereby is defined to be a 'jointist.' Any person convicted of being * * * a jointist * * * as herein defined shall be guilty of a felony and shall be punished by imprisonment for not less than one year or more than five years."

Laws of Washington, 1917, Chap. 19, p. 60.

Under the Federal law a felony is an offense punishable by death or imprisonment for a term exceeding one year.

Penal Code, paragraph 335.

From the statute above quoted it may be stated without cavil that the appellant Rousseau was convicted of a felony prior to his last entry.

As to the question of whether or not the crime of being a "Jointist" involves moral turpitude, it might be observed that the term is expressive and cannotes the idea of an individual conducting and maintaining a low resort of ill repute. In carrying out this thought we cannot do better than quote the following portion of Judge Neterer's opinion (Tr. p. 16), wherein he cites authorities supporting his conclusions that being a "Jointist" involves moral turpitude:

> " 'Turpitude,' is defined, Bouvier, 'Everything done contrary to justice, honesty, modesty, or good morals, is said to be done with turpitude'; 'Moral,' Webster, 'The doctrine or practice of the duties of life pertaining to those intentions and actions of which right and wrong, virtue and vice, are predicated or to the rules by which such intentions and action ought to be directed; relating to the practice, manners, or conduct of men as social beings in relation to each other, as respects right and wrong so far as they are properly subject to Rules.' Moral Turpitude has been defined as an act of baseness, vileness, or depravity in private and social duties which man owes his fellow men, or to society in general, contrary to the acts and customary rules of right and

duties between man and man. Vol. 5, Words & Phrases, p. 4580. Moral Turpitude is 'depravity in the private social duties which a man owes to his fellow man or to society in general. An act contrary to the accepted and customary rules of right and duty between man and man.' 20 Am. & Eng. Ency. of Law, p. 872."

Certainly a "Jointist" is one who transgresses the law and rules of conduct as herein above defined and quoted.

As to the last assignment of error, it may be stated that it is a familiar rule that the court in habeas corpus proceedings will not disturb the findings of the Commissioner of Immigration in deportation proceedings if the court finds upon an examination of the record that there is *any evidence* to support the findings of the Commissioner.

Chin Yow vs. U. S., 208 U. S. 8;
Ex parte Moaha Singh, 207 Fed. 780;
Ex parte Chin Doe Tung, 236 Fed. 1017.

Certainly there can be no contention made that the Commissioner was without some evidence to support that part of the warrant of deportation upon which Judge Neterer hinged his decision.

Concluding, it is respectfully asserted that appellant Rousseau was given an opportunity to have

counsel at the Commissioner's hearing. That prior to his last entry into the United States he was convicted of a felony which involved moral turpitude. That there is admittedly sufficient evidence to support that part of the warrant of deportation upon which the trial court grounded his decision.

From these conclusions it seems to be clear that appellant violated that portion of the Immigration Act of February 5th, 1917,

39 Statutes at Large 889,
4289¼jj C. S. 1918,

which provides for the exclusion of an alien convicted of a crime involving moral turpitude.

Respectfully submitted,

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